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taxation is to be construed strictly against the state in favor of the taxpayer as represented by the executor of the estate. *Matter of Fayerweather*, 143 N. Y. 114."

This is undoubtedly true, but we respectfully submit that the learned court has seemed to lose sight of the particular law by virtue of which this assessment is made and the construction of which is called for by this decision. The history of legislation upon this subject in New York and elsewhere shows a desire to remedy the fact that as a general rule the great bulk of personal property escapes taxation during the life of the owner since, from its very nature it can be readily concealed. And it was in regard to a message to the legislature by the chief executive of that state calling for some additional tax law to remedy this evil that the first of a series of acts was passed of which the present is the culmination. (Opinion by Judge Vance in *Bronson's Case*, 150 N. Y. 1). Among other provisions the law now in force provides for the tax of the transfer by will of property within the state as above stated, the word property being afterward defined to include "all property or interest therein whether situated within or without this state." (Laws of 1898, Chapter 88, Section 242.) Thus plainly intending to make the tax as sweeping in its results as possible.

Since, therefore, the state has complete power to tax the transfer of stock as property at its true value when such shares are held in corporations organized under its laws regardless of where their property is situated (*Plummer v. Coler*, 178 U. S. 115), it would seem that such was the plain and undoubted intention of the legislature in the present instance. And this being the case, the presumption against the possibility of double taxation is rebutted. If such a construction will operate harshly upon certain individuals the remedy is not with the courts but rather with the legislature for a change in the enactment.

There is no case to our knowledge which has decided this identical question. The New York court considers *Moody v. Shaw*, 173 Mass. 375, and says that the opinion in that case does not seem to warrant a construction to the effect that such a transfer of shares as here under consideration would be taxed according to their full value. There the corporation involved was also the Boston and Albany Railroad. It is true that this precise point did not arise and the opinion is very short. But a careful consideration of that case leads one to draw the inference that in that state the transfer of such shares of stock for the purpose of taxation, would be assessed as shares in any domestic corporation regardless of the situation of the corporate property and incorporation elsewhere.

THE JURISDICTION OF THE FEDERAL COURTS IN CASES OF CONSPIRACY AGAINST PERSONS OF AFRICAN DESCENT.

On October 24, 1906, the Supreme Court of the United States, filed an opinion in the case of *Hodges v. United States*, 203 U. S. 1, which can hardly fail to be of universal interest especially in the southern sections of the country. In that case the court, in an

opinion remarkable for its brevity, held, Harlan and Day, JJ., *dissenting*, that the Federal Courts have no jurisdiction under the 13th Amendment or sections 1978, 1979, 5508, 5510, Revised Statutes, of a charge of conspiracy made and carried out in a state to prevent citizens of African decent, because of their race and color, from making or carrying out contracts and agreements to labor.

That the Federal Courts had jurisdiction of actions of this class previous to the three *post bellum* amendments to the Constitution, can hardly be contended. With the exception of a very few restrictions such as the prohibition against *ex post facto* laws, bills of attainder, etc., the entire control over the privileges and immunities of the citizens was vested exclusively in the state legislatures. *Carfield v. Coryell*, 4 Wash. Cir. Ct., 371, 381. The Federal Government is one of enumerated powers. *10th Amendment to the Constitution*. The 13th and 14th are universally conceded to be restraints on state action and are not intended to furnish redress for the invasion of individual rights. *United States v. Harris*, 1906 U. S. 313. The state alone has sovereignty and jurisdiction to protect personal liberty against lawless violence on the part of individuals. *Cooley's Const. Lim.* 706. Unless, therefore, the 13th Amendment gives the Federal Courts jurisdiction over crimes of the character charged in *Hodges v. The United States*, it would seem that, of necessity, the remedy must be sought through the state courts subject to supervision by writs of error in proper cases. The question then resolves itself into a determination of the scope of the 13th Amendment.

The national government has power, whether expressly given or not, to secure and protect rights conferred or guaranteed by the Constitution. *United States v. Reese*, 92 U. S. 214. Every right created by, arising under, or dependent upon, the Constitution of the United States may be protected and enforced by Congress in such manner as Congress may, is its discretion, deem best adapted to the objects sought. *Logan v. United States*, 144 U. S. 293. Can it be correctly said, however, that a conspiracy to prevent citizens of African decent, because of their race and color, from making or carrying out contracts and agreements to labor is the deprivation of a right created by, or dependent upon, the 13th Amendment? Or in other words does such a conspiracy in its effect virtually amount to slavery and involuntary servitude? The solution of this question appears to be the point of dissension among the judges in this case.

Pomeroy in his work on *Municipal Law*, 660 p. 383, defines slavery as a status implying perpetual servitude to the master or owner upon whom it confers the complete control and dominion over the labor, acquisitions and person of the slave. Whether this definition is sufficiently comprehensive or not, we do not attempt to say. At any rate, it is sufficient for our purpose. While the inciting cause of the 13th Amendment was the emancipation of the colored race, yet it was not an attempt to commit that race to the care of the nation. It reaches every race and equally

forbids Mexican peonage and the Chinese coolie trade when they amount to involuntary servitude. *Slaughterhouse Case*, 16 Wall. 36. It must be borne in mind, however, that Congress did not assume under the authority given by the 13th Amendment to adjust what may be called the social rights of men in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship and the enjoyment or deprivation of which constitute the essential distinction between freedom and slavery. *Civil Rights Cases*, 109 U. S. 22.

The rights of citizens to pursue and follow any of the ordinary vocations of life are not created by the Constitution, but are among the inherent and inalienable rights of men. *Butcher's Union v. Crescent City Co.*, 111 U. S. 757; *Civil Right Cases*, 109 U. S. 3, 13. In the case of *Logan v. United States*, 144 U. S. 203, 293 the court held that the right to work at a given occupation, or particular calling, free from injury or interference by individual citizens was not a right guaranteed by the Constitution. Where a state has been guilty of no violation of the 13th, 14th or 15th Amendments no power is conferred on Congress to punish private individuals who, acting without any authority from the state, and it may be defiance of law, invade the rights of the citizen protected by such amendments. *Le Grand v. United States*, 12 Fed. 577. Unless the state denies to persons of the colored race the equal protection of the laws, Congress has no power to pass laws for the punishment of ordinary crimes and offences against them. *United States v. Cruikshank et al.*, 1 Wood 308.

We fail to see therefore, how under circumstances such as these where the state has been guilty of no unjust discrimination against her colored citizens, but on the contrary is ready and willing to enforce the law and protect them in the exercise of their fundamental rights as citizens, the Federal Courts have any right to assume jurisdiction simply because the persons wronged happen to be of the African race. To hold otherwise would be in fact granting them privileges not secured to the white citizens who gave them their freedom and to invest the Federal Courts with jurisdiction over practically the whole category of crimes when the victim happened to be a negro. Such a result was clearly not intended by the adoption of the 13th Amendment of the Constitution.